

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9212 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

AHMEDBHAI L MALEK

Appearance:

MR ASHISH M DAGLI for Petitioner No. 1
MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/01/2002

ORAL JUDGEMENT

The present petition is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") challenging the order passed by the Conciliation Officer on Approval Application being No.11 of 1994 dated 28.5.2001, whereby the approval application was rejected. The case of the petitioner corporation is that earlier an approval application was filed and the same was granted. The said order of granting approval application was challenged by the workman before this Court by filing Special Civil Application No.9542 of

1995. It was decided by this Court (Coram R. Balia, J.) by judgement and order dated 5.12.1997.

2. In this petition notice was issued by this Court on 10.10.2001 returnable on 29.10.2001. On 2.11.2001, rule was issued returnable on 4.12.2001. Mr.G.K. Rathod, learned for the respondent workman has waived service of rule for the respondent, meaning thereby the learned advocate Mr.Rathod was ready with the matter even on that date. Therefore, today his request for time for preparing the matter and finding out decision(s) in his favour is not a bona fide request. Hence rejected.

3. The operative part of the order dated 5.12.1997 in Special Civil Application No.9542 of 1995 reads as under:

".. .. The present order is on the face of it suffers from vice of being non speaking order, it would only be just and proper in the circumstances of the present case to quash the order according approval and direct the Conciliation Officer before whom proceedings were pending at the relevant time to decide the application for according approval to the respondent for their action in dismissing the petitioner workmen in accordance with law by making a speaking order relegating the parties to situation anterior to making of the impugned order at the stage of pending of proceeding under section 33 (2)(b) and I do so direct accordingly."

4. The matter went back to the authorities and the authorities while considering the approval application afresh on a supertechnical ground that an amount of Rs.19.70 paise was paid less to the workman in the notice pay, have rejected the approval application. The term, 'supertechnical' is used because the Conciliation Officer while considering 'notice pay' which is otherwise supposed to be equivalent to last month's pay has paid a total sum of Rs.4987/-, while last month's salary was Rs.4927/-. An amount of Rs.60/- was more than the last month's pay, but while showing break up of the amount paid, the 'line allowance' is paid only Rs.93.40 instead of Rs.103.10, i.e. Rs.9.70 paise short, while 'night allowance' is paid only Rs.42/-, which ought to have been Rs.52/-. Thus, there was shortage of Rs.19.70 paise under these two heads as contended by the learned advocate for the respondent workman which was upheld by the Conciliation Officer.

5. The Conciliation Officer lost sight of the fact that the petitioner corporation was supposed to pay last month's pay as 'notice pay' and that was only Rs.4927/-, the total amount paid was Rs.4987/-. Thus, there was no short payment and there was no reason to reject the approval application on such supertechnical ground. Though the Conciliation Officer has recorded in terms that, 'the respondent workman has given in writing to the authority that he has received documentary evidence as per his demand' and he has not taken any contention for non supply of documentary evidence by the authority before Inquiry Officer and during the course of the inquiry the respondent workman has admitted that such an incident had taken place, thus, in departmental inquiry prima facie charges which were levelled against the employee were having same substance and therefore, the contentions regarding charge sheet cannot be accepted, was not correct in rejecting the approval application.

6. The present Special Civil Application is allowed. The order passed by the Conciliation Officer on the approval application is hereby quashed and set aside. Rule is made absolute. No order as to costs.

7. Mr.G.K. Rathod, learned advocate for the respondent employee submitted that the Court may clarify to the effect that the observations made by this Court hereinabove shall not hamper the rights of the respondent workman while challenging his order of dismissal before appropriate forum. The request is reasonable. The same is granted. The forum considering the legality and validity of the order of dismissal shall decide the same on its own merits without influenced by any of the observations made by this Court hereinabove.

(Ravi R. Tripathi, J.)
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